

# Responding to FOIA Requests 101

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# Purpose of this presentation

**This presentation will provide you with:**

- ▶ a basic understanding of how to respond to a Freedom of Information Act (FOIA) request, and
- ▶ the tools that will assist you in responding to your client's questions about FOIA requests.

The **March 31, 2015 OGC Procedures for Responding to Freedom of Information Requests** (OGC FOIA Procedures) are available at:

- ▶ <http://intranet.epa.gov/foia/docs/FOIA-SOPs--OGC.pdf>, and
- ▶ Each law office's portal under "OGC FOIA Instructions."

NOTE: This presentation discusses specific "steps" or "attachments," which are found in the *OGC FOIA Procedures*.

# FOIA

- ▶ Each year, EPA receives over 10,000 FOIA requests.
  - ▶ “The responsibility for effective FOIA administration belongs to all of us - it is not merely a task assigned to an Agency’s FOIA staff.”
    - Attorney General Holder
- ▶ GLO’s Information Law Practice Group defends the Agency in FOIA litigation; provides legal counseling on information law issues, including counseling on FOIA requests; and responds to administrative FOIA appeals.
  - ▶ The media law offices also play an important role in counseling on FOIA requests.
- ▶ The FOIA Expert Assistance Team (FEAT) provides counseling on selected FOIA requests.



# Step 1: Who is responsible for responding to a FOIA request?

## ► *Action Office*

- The assigned OGC law office or lead office, which is the office responsible for closing the FOIA request.

## ► *Contributing Office*

- The law office that is responsible for completing a task, such as searching, collecting and reviewing responsive records.

## ► *Assigning the request to an OGC Action Office:*

- If the Agency FOIA Office assigns OGC as the lead office for a FOIA request, then the **General Law Office** will review the request and assign it to the relevant law office.
  - For example, if we receive a FOIA request that seeks the same type of records and implicates four law offices, each law office must identify one point of contact for the response and coordinate with the others in responding to the request.

# Step 2: Tips on determining the scope of the FOIA request

## Deciphering the FOIA request.

1. Improper FOIA request? See Attachment A, *OGC FOIA Procedures*.
  - ▶ Requests that do not reasonably describe the records sought.
  - ▶ Requests that pose questions like interrogatories, rather than seek documents.
  - ▶ FOIA does not require EPA to respond to...
    - ▶ Requests requiring the creation of new records or future records;
    - ▶ Requests requiring the re-creation of records which were properly disposed of;
    - ▶ Requests for records the Agency retains no control over;
    - ▶ Requests for records which are already publicly available on the EPA website; and
    - ▶ Requests for personal records.
2. General clarification of the FOIA request? See Attachment C.

# Additional steps for responding to a FOIA request

1. **Step 3:** Determine if responsive records are in other law offices, regions, or other offices within the agency.
2. **Step 4:** Estimate processing fees.
  - ▶ If fees exceed \$25, then EPA must provide a fee estimate to the requester, and the requester must provide a written assurance of payment, unless the Agency has already granted a fee waiver. See [Attachment B](#) (to request a written assurance of payment).
3. **Step 5:** Determine response time. The FOIA requires EPA to respond to requests no later than 20 working days from the date the request was received.
  - ▶ You can toll or stop the clock:
    - ▶ To request a written assurance of payment - [Attachment B](#).
    - ▶ To clarify the scope of the request (only one time!) - [Attachment C](#).
  - ▶ To request an extension, see:
    - ▶ [Attachment D](#) (to request an extension 10 days or less).
    - ▶ [Attachment E](#) (to request an extension for more than 10 days).



# Step 6: Collect, review, and prepare responsive records

- ▶ **The Action and Contributing Offices** are responsible for identifying, collecting, and reviewing responsive records.
  - ▶ IDENTIFY - discussed in Step 2, Slide 5.
  - ▶ COLLECT
    - ▶ **Legal standard:** an Agency must undertake a search that is “reasonably calculated to uncover all relevant documents.”
    - ▶ *Microsoft Outlook Search Service:* For requests that seek Microsoft Outlook email and calendar records, contact Mike Murphy or Vicky Blackmond, who will assist you in completing the *New eDiscovery Service Request Form*.
    - ▶ *Individual search:* Request may also require all custodians to individually search their Lotus Notes email and calendar, electronic file folders in C drive, network drives, thumb drives, CDs, ECMS, CMS, other agency databases, paper files, and Federal Records Center.
  - ▶ REVIEW
    - ▶ Identify FOIA exemptions. See Attachment F (FOIA Exemption Tip Sheet).
    - ▶ Redact.
    - ▶ Upload into FOIAonline.

# Steps for responding to the FOIA requester

- ▶ **Step 7:** Determine the appropriate response:
  - ▶ Full release
  - ▶ Full denial
  - ▶ Partial denial
  - ▶ No records
  - ▶ CBI
  - ▶ Glomar response
- ▶ **Step 8:** Prepare the draft response letter.
  - ▶ Attachment G (templates of final responses).
- ▶ **Step 9:** Finalize processing of fees.
- ▶ **Step 10:** Obtain approval from an authorized official (in OGC, it's the Associate General Counsel or equivalent; elsewhere, it's the Division Director or equivalent).
- ▶ **Step 11:** Respond to the request by uploading final response letters and responsive records into FOIAonline.
- ▶ **Step 12:** Close out the FOIA request. Note: all tasks must be completed before you can close out the FOIA request in FOIAonline.



# Questions and suggestions for improving the OGC FOIA Procedures

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